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IN THE

Supreme Court of the United States

October Term, 1962

No. 827

LILA MEYERKORTH, AND THE EMMANUEL ASSOCIATION,

Appellants,

vs.

STATE OF NEBRASKA, FREEMAN DECKER, COMMISSIONER OF THE STATE OF NEBRASKA, HELEN HANIKA, COUNTY SUPERINTENDENT OF RICHARDSON COUNTY, NEBRASKA,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA

JURISDICTIONAL STATEMENT

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Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA

JURISDICTIONAL STATEMENT

Appellants appeal from a judgment of the Supreme Court of the State of Nebraska entered on June 8, 1962, rehearing denied, September 28, 1962, affirming a judgment of the District Court of Lancaster County, Nebraska, and submit that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The decree and judgment of the District Court of Lancaster County, Nebraska, is not reported but may be found in the record at pages 34 to 35. The opinion of the Supreme Court of the State of Nebraska is reported in 173 Neb. 889, 115 N. W. 2d 585 (1962). The judgment of the Supreme Court of the State of Nebraska is appended to this statement and designated Appendix A; the opinion of the Supreme Court of the State of Nebraska is appended and designated as Appendix B.

JURISDICTION

This suit was brought in the District Court of Lancaster County, Nebraska, seeking a declaratory judgment on the constitutionality of Sections 79-201, 79-1201 et. seq., and 79-1701, et. seq., Revised Statutes of the State of Nebraska (1943) and seeking to enjoin enforcement of the aforementioned statutes as unconstitutional.

The judgment and decree of the District Court of Lancaster County, Nebraska, was entered on December 21, 1961. A notice of appeal to the Supreme Court of the State of Nebraska was filed in the District Court of Lancaster County, Nebraska, on December 22, 1961. The judgment of the Supreme Court of the State of Nebraska, affirming the judgment of the District Court of Lancaster County, Nebraska, was entered on June 8, 1962. The Supreme Court of the State of Nebraska denied a motion for rehearing on September 28, 1962. The notice of appeal was filed in the Supreme Court of the State of Nebraska on December 20, 1962.

The jurisdiction of the Supreme Court of the United States to hear this appeal rests upon Title 28, United States Code, Section 1257(2). The following decisions

sustain the jurisdiction of the Supreme Court of the United States to review the judgment on appeal in this case:

Truax v. Corrigan, 257 U. S. 312 (1921).

Western Turf Ass'n v. Greenberg, 204 U. S. 359 (1907).

People of State of Ill. ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County, 333 U. S. 203 (1948).

QUESTION PRESENTED

Do the statutes and regulations of the State of Nebraska for the control and regulation of non-public schools (Sections 79-201, 79-1201 et. seq., and 79-1701 et. seq., Revised Statutes of Nebraska (1943), as construed and applied in this case conflict with the rights guaranteed to the appellants and those similarly situated by the First and Fourteenth Amendments to the United States Constitution?

STATUTES INVOLVED

Sections 79-201, 79-1201 et. seq., and 79-1701 et. seq., Revised Statutes of the State of Nebraska (1943) are set forth in Appendix C hereto.

STATEMENT OF THE CASE

The Emmanuel Association is a religious body with headquarters in Colorado Springs, Colorado. The Association and its members, of which Lila Meyerkorth, appellant, is one, provide places of worship for members in several states, including the State of Nebraska. The churches which follow the doctrines of the Emmanuel Association are owned and operated by the members of each local congregation who have local control over the conduct and affairs of each individual church. Appellant Lila

Meyerkorth is a member of such a church located near Shubert, Richardson County, Nebraska, and as a member of an Association of Christian parents, has employed one Eleanor Berry to educate her children pursuant to the religious doctrines and beliefs of the members of the Association.

The Commissioner of Education informed Eleanor Berry that he would not grant her a Nebraska teaching certificate because she does not meet the qualifications prerequisite to the issuance of such a certificate and that he would not recognize her college credits and degree. The appellees, allegedly acting under authority granted to them by Section 79-201, Sections 79-1201 et. seq., and Sections 79-1701 et. seq., Revised Statutes of the State of Nebraska (1943), threatened to close the school in which Eleanor Berry was teaching and threatened to start criminal and other proceedings against the appellant and other parents to compel them to send their children to other available schools which do not have the proper religious atmosphere as is now available under the tutoring of Eleanor Berry.

Appellant and others similarly situated are willing to pay and have paid taxes properly levied for the support of the public school but believe that it is their fundamental right, given by God and the Constitutions of the United States and the State of Nebraska, to educate their children spiritually and intellectually in concert with the tenets of their own religious belief. Realizing full well the physical facilities of the public school and also the qualifications of Eleanor Berry, appellant instituted suit in the District Court of Lancaster County, Nebraska, on August 9, 1961, seeking a declaratory judgment on the validity of Sections 79-201, 79-1201, et. seq., and 79-1701 et. seq., Revised Statutes of the State of Nebraska (1943), and the regulations promulgated thereto. These statutes

provide for compulsory school attendance, certification of teachers, and for the operation and supervision of parochial schools. Appellants further sought to declare any action on the part of appellees to close the parochial school operated by appellants, or attempts of the appellees to compel the appellants to send their children to public schools, as an unconstitutional and void attempt to exercise the police powers of the State.

The appellees filed a demurrer to appellants' amended petition stating that such petition failed to state facts sufficient to constitute a cause of action against the appellees. The demurrer was sustained by the District Court of Lancaster County, Nebraska, and when appellants elected to stand on their amended petition, the District Court of Lancaster County, Nebraska, dismissed the appellants' amended petition.

The District Court of Lancaster County, Nebraska, overruled appellants' timely motion for a new trial and rehearing. (Record page 38).

On December 22, 1961, appellants filed a Notice of Appeal to the Supreme Court of Nebraska (Record page 39). On December 26, 1961, appellants filed a Praecipe for Transcript. (Record page 40). The Notice of Appeal was served on counsel for the appellees on December 22, 1961. (Record page 39). On February 2, 1962, appellants filed a Notice pursuant to Rule 17, Rules of Supreme Court of the State of Nebraska, notifying the Court that the appeal involved a question of constitutionality of statutes of the State of Nebraska (Record page 43). Briefs were then filed by both appellants and appellees, and oral argument had. The Nebraska Supreme Court affirmed the judgment of the District Court of Lancaster County, Nebraska, on June 8, 1962. (Record page 44). A motion

for rehearing and a request for oral argument and a brief in support of appellants' motion for rehearing were filed on June 28, 1962. (Record page 70). The motion for rehearing was denied on September 28, 1962. (Record page 71). The notice of appeal to the Supreme Court of the United States followed and was filed on December 20, 1962. (Record page 73).

STAGES IN THE PROCEEDINGS AND MANNER IN WHICH FEDERAL QUESTIONS WERE RAISED

Appellants have contended throughout this proceeding that the statutes and regulations of the State of Nebraska and the Nebraska Department of Education for the regulation of non-public schools go beyond protecting the interests of the State, and violate the constitutional rights of parents to educate their children in accordance with the tenets of their religious faith. Appellants have based their argument on the First and Fourteenth Amendments of the United States Constitution and Article I, Section 4 of the Nebraska Constitution.

In their amended petition, appellants alleged that the Statutory provisions and regulations were void and unconstitutional to the extent that they abridge and prohibit the appellants' free exercise of their religious beliefs. (Record page 26). The same point was raised on appellants' motion for new trial and rehearing. (Record page 37).

The issue was argued fully in the briefs and oral argument before the Nebraska Supreme Court and the point was again raised in appellants' motion for rehearing (Record page 70); and again argued at length in their brief in support for motion of rehearing (Record page 70). At all stages whenever the point was raised the ruling, decrees and judgment of both the District Court of Lancaster

County and the Supreme Court of the State of Nebraska have been to the effect that appellants' petition failed to state facts sufficient to constitute a cause of action and that the statutes and regulations in question did not abridge appellants' freedom of religion. It is appellants' contention that such statutes and regulations are an invalid exercise of the state's police power and violate their freedom of religion guaranteed by the First and Fourteenth amendments of the United States Constitution and Article I, Section 4 of the Nebraska Constitution.

The Federal issue described above was properly placed before the Nebraska Supreme Court for decision; it was necessary to a determination of the case; and there is no adequate non-federal ground to support the decision against the appellants.

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The right of appellants to educate their children in a manner commensurate with their religious beliefs is a fundamental right guaranteed by the United States Constitution and the Nebraska Constitution and a right which has consistently been upheld by the United States Supreme Court. It is an issue which is fundamental to our democratic society and certainly a question of substantial importance.

While appellants do not deny that the state has the right to exercise its police powers to protect the interests of the public, the appellants do object to any unreasonable and capricious exercise of this power. The demarcation line between a reasonable exercise of police power and an arbitrary exercise of such power is not always an easy one to draw. Actually the controversy is not whether the state may exercise its police power in setting standards and teacher requirements but the limits which the free-

dom of religion imposes on these standards and regulations. What is the public interest in this area and what standards may the State of Nebraska set to protect those interests? The determination of this question becomes extremely important when the State of Nebraska fails to weigh the interests of the State against the fundamental freedom of religion guaranteed to the individual parents by the First and Fourteenth Amendments of the United States Constitution and Article I, Section 4, of the Nebraska Constitution.

Briefly, appellants' position is that the State's interest is limited to seeing that the children in the state are given "the language of their countr , and to insure that they understand the nature of the government under which they live, and are competent to take part in it." *Nebraska District of Evangelical Lutheran Church v. McKelvie*, 104 Neb. 93, 175 N. W. 531 (1919). This case involved a situation where the State of Nebraska attempted to prohibit the teaching of foreign languages in its schools. Subsequently, this Court struck down an attempt by a state to force all of the children of the state into the same educational mold by prohibiting their attendance at private or parochial schools. *Pierce v. Society of Sisters*, 268 U. S. 510, 69 L. Ed. 1070, 45 S. Ct. 571 (1924). The current action by the State of Nebraska represents an attempt by the professional educators to circumvent the intent of the ruling of this case by requiring that all of the teachers attend the same type of school. Surely if it is an infringement of the liberties of the citizens to require that all children be educated at the same school, it cannot be Constitutional to require that all students be taught by teachers who have attended the same schools. If all of the teachers are turned from the same mold, it will only be in exceptional instances that their students will not,

likewise, be turned from the same mold. As long as the education of the children fulfills the interests of the state, the Legislature has no business attempting to extend the state's control over every facet of the education of the children in the State of Nebraska by controlling who teaches these children.

The question of whether these statutes go beyond the protection of the state's interest hinges on what interest is sought to be protected. Numerous other small religious denominations who are unable financially to educate their tutors to meet these arbitrary statutory requirements are extremely interested in preserving their religious schools and in educating their children in an atmosphere conducive to furthering their religious beliefs. Likewise, parents in these organizations are extremely interested in preserving their right to educate their children in conjunction with the tenets of their religion without fear of threatened prosecution. Appellants' schools are already being attacked in the State of Ohio on this same basis by the professional educators in the State of Ohio and the Amish in Iowa have a similar problem, to name only a few of the areas where this matter has arisen.

It is not the contention of appellants that the state does not have the right to test the qualificaions of a person to teach in the State of Nebraska by appropriate tests; but appellants do contend that to require such teacher, before being eligible for such tests, must attend a college teaching in a fashion approved by the professional educators infringes their Constitutional rights with relation to their children. Nor do petitioners contend that the state does not have a right to test the efficiency and effectiveness of the teaching program of their school by giving tests to the pupils to determine their attained proficiency in those matters in which the state has an interest as here-

inbefore defined by this Court; but appellants do contend that to require that proficiency to be attained by the teaching of a person who has attended a college of the professional educators' determination is an infringement of their Constitutional rights with relation to their children. Further, appellants do not contend that the state has no right to require school attendance over a specified period of time for children within specified ages but they do contend that it is beyond the interests of the state that such attendance shall be under a teacher whose only qualification to teach has been found to be attendance at a particular school, the curricula of which has been molded by the professional educators.

A decision in this case will be of immense assistance in a determination of what interest the state in fact has in the area of education, and, consequently, what standards the state may enact to protect that interest. At the present time no one is certain to what extent the Legislatures of the various states may go in exercising their police powers to protect the public interest.

This appeal, therefore, presents extraordinary and substantial Constitutional questions which should be ruled upon by this Court.

Respectfully submitted,

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APPENDIX A

Judgment of the Nebraska Supreme Court

June 8.

Lila Meyerkorth et al., Appellants,	)	Appeal from the District Court for Lancaster County. No. 35210.
v.	)	
State of Nebraska, et al., Appellees.	)	

This cause coming on to be heard upon appeal from the district court of Lancaster County, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is, therefore, considered, ordered, and adjudged that said judgment of the district court be, and hereby is, affirmed; that appellees recover of and from appellants their costs herein expended, taxed at $; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Opinion by Messmore, Judge.

APPENDIX B

Opinion of the Nebraska Supreme Court

LILA MEYERKORTH ET AL., APPELLANTS, v. STATE OF NEBRASKA ET AL., APPELLEES.

— N. W. 2d —

Filed June 8, 1962. No. 35210.

Constitutional Law: Schools and School Districts. The statutes set forth in the opinion, complained about by the plaintiffs as being unconstitutional, held not to violate the First Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States, or Article I, section 4, of the Constitution of the State of Nebraska.

Appeal from the district court for Lancaster County: Herbert A. Ronin, Judge. Affirmed.

Crosby, Pansing, Guenzel & Binning and Theodore L. Kessner, for appellants.

Clarence A. H. Meyer, Attorney General, Dwain L. Jones, and Melvin K. Kammerlohr, for appellees.

Heard before Simmons, C. J., Messmore, Yeager, Spencer, Boslaugh, and Brower, JJ., and Chadderdon, District Judge.

Messmore, J.

The plaintiffs brought this action for declaratory judgment in the district court for Lancaster County, the purpose of the action being to declare sections 79-201, 79-1201 et seq., and 79-1701 et seq., R. R. S. 1943, and the regulations pursuant thereto which provide for compulsory school attendance, certification of teachers, and for the operation and supervision of parochial schools unconsti-

tutional and a void attempt to exercise the police power of the state. As will hereinafter appear, the sections of the statutes necessary to a determination of this appeal provide for compulsory school attendance, certification of teachers, and for the operation and supervision of parochial schools.

The plaintiffs' contention is that said sections of the statutes are unconstitutional to the extent that they abridge and prohibit the plaintiffs' free exercise of their religious beliefs, and any attempt on the part of the State to close the school operated by the plaintiffs would be unconstitutional and void.

The defendants demurred to the plaintiffs' amended petition on the grounds that it failed to state a cause of action against the defendants. The demurrer of the defendants to the amended petition was sustained. The plaintiffs elected to stand on their amended petition, whereupon the trial court dismissed the plaintiffs' amended petition. The plaintiffs filed a motion for new trial which was overruled, and the plaintiffs perfected appeal to this court.

The plaintiffs' assignment of error is that the trial court erred in sustaining the demurrer of the defendants to the plaintiffs' amended petition, and in dismissing the plaintiffs' amended petition.

The plaintiffs' amended petition alleged that defendant Freeman Decker was the Commissioner of Education of the State of Nebraska; that the defendant Helen Hanika was the county superintendent of Richardson County; that the plaintiff Lila Meyerkorth was a resident of Richardson County; that the Emmanuel Association was a religious body with headquarters in Colorado Springs, Colo-

rado; that the Emmanel Association and its members, of which Lila Meyerkorth is one, provide places of worship for members in several states, including the State of Nebraska; and that the churches which follow the doctrine of the Emmanuel Association are owned and operated by the members of each local congregation who have local autonomy over the conduct and affairs of each individual church.

The amended petition further alleged that one of such churches is near Shubert, Richardson County, Nebraska, of which Lida Meyerkorth, plaintiff, is a member; that the plaintiff, as a member of an association of Christian parents, had employed one Eleanor Berry, whom she believed to be a qualified Christian teacher, qualified to educate her children spiritually and intellectually in a religious atmosphere, and pursuing the religious doctrines and beliefs of the members of the Association; that plaintiff and other parents were fully aware of the physical facilities available at the public schools in the vicinity as well as the teachers and the courses of study offeered at such schools; that in like manner, plaintiff and other parents were aware of the professional training and education of the said Eleanor Berry, and with this full awareness, desired to employ said Eleanor Berry to tutor their children spiritually and intellectually so that the education of said children could be conducted in a particular religious atmosphere, and with the belief that said education is of equal or better quality to that provided in the public schools or other schools in the vicinity; that the plaintiff and other parents know the manner in which Eleanor Berry conducts the tutoring of their children, know the facilities available to the children, and are satisfied that the teachings and education are being conducted in their proper religious at-

mosphere which they desire for their children; that the defendants and each of them are threatening to close said Richardson County school by enforcement of the unconstitutional teacher qualifications and compulsory school attendance statutes and regulations, alleging that the school and the teacher, Eleanor Berry, are not qualified under the said statutes of the State of Nebraska; that the defendants and each of them are threatening to prevent plaintiffs from hiring Eleanor Berry as a private tutor for their children by the enforcement of the unconstitutional compulsory school attendance statutes; that the Commissioner of Education has informed Eleanor Berry that he would not grant unto her a Nebraska teaching certificate, for the reason that she does not meet the qualifications prerequisite to the issuance of such a certificate and that he will not recognize her college credits and degree; that said qualifications, as shown on exhibit A attached and incorporated by reference, are a void and unconstitutional attempt to exercise the police power of the State of Nebraska; that the Commissioner of Education and the Richardson County superintendent of schools, with the aid and assistance of the Attorney General's office and the Richardson County Attorney, have attempted to close said school and deny plaintiff and other parents the right to have their children educated in the religious atmosphere desired by plaintiff; that said defendants have threatened to start criminal and other proceedings against the plaintiff and other parents to compel them to send their children to other available schools, which said schools do not have the proper religious atmosphere as is available to the children of the plaintiff and other parents under the tutoring of Eleanor Berry; that the concerted efforts of the defendants and each of them to compel the plaintiff and other parents to send their children to other schools and to deny them the right to the

tutoring of Eleanor Berry and the proper religious atmosphere for their education, is allegedly being done under authority granted to the defendants by section 79-201, section 79-1201 et seq., and section 79-1701 et seq., R. R. S. 1943; that said statutes provide for the compulsory school attendance of children for prescribed number of days, certification of teachers, and for the operation and supervision of parochial schools; that the efforts of the defendants to enforce the statutes as above set forth is in violation of the freedom of religion and the right of free exercise of religion guaranteed to the plaintiff by the Constitution of the United States and the Constitution of the State of Nebraska; that such statutes are an arbitrary, unwarranted, and an invalid attempt to exercise the police power of the State of Nebraska to infringe upon the aforesaid freedom and rights of the plaintiff; and that plaintiff and others similarly situated have paid and will pay all taxes properly levied for the support of the public school but declare and believe that it is their fundamental right, given by God and the Constitutions of the United States and the State of Nebraska, to educate their children under their own supervision as parents free from interference by the officials of the State of Nebraska except for such tests by such officials as may be reasonable and proper to determine that satisfactory educational levels are reached by such children under such parental education.

"Declaratory judgment proceedings have frequently been employed to determine questions as to the construction or validity of statutes." Thorin v. Burke, 146 Neb. 94, 18 N. W. 2d 664. See, also, Nebraska Seedsmen Assn. v. Department of Agriculture & Inspection, 162 Neb. 781, 77 N. W. 2d 464.

The Declaratory Judgments Act is applicable to this case.

"A general demurrer admits all allegations of fact in the pleading to which it is addressed, which are issuable, relevant, material, and well pleaded; but does not admit the pleader's conclusions of law or fact. * * * In passing on a demurrer to a petition, the court will consider an exhibit attached thereto and made a part thereof." Elliott v. City of Auburn, 172 Neb. 1, 108 N. W. 2d 328.

The plaintiffs state that all of the allegations of their amended petition are admitted by the defendants' demurrer. Defendants' demurrer does not admit that the effort to enforce the statutes complained of by the plaintiffs violates freedom of religion and the right of free exercise of religion guaranteed by the Constitution of the United States and the Constitution of the State of Nebraska, nor does the demurrer admit that such statutes are arbitrary, unreasonable, or invalid. Such questions are questions of law to be determined in this appeal.

The defendants contend that the statutes complained of by the plaintiffs are valid and constitutional.

The plaintiffs cite Article I, section 4, of the Constitution of the State of Nebraska which provides in part: "All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. * * * Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction."

The plaintiffs also cite the First Amendment to the Constitution of the United States which provides in part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *."

The plaintiffs cite section 1 of the Fourteenth Amendment to the Constitution of the United States which provides in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The plaintiffs contend that the statutes and regulations of the State of Nebraska and the Nebraska Department of Education for the regulation of nonpublic schools go beyond protecting the interests of the state, and violate the constitutional rights of parents to educate their children in accordance with the tenets of their religious faith.

In support of their contention the plaintiffs cite the following sections of the statutes: Sections 79-201, 79-1201, 79-1247.02, 79-1701, 79-1705, and 79-1706, R. R. S. 1943, and section 79-1210.01, R. S. Supp., 1961.

Section 79-201, R. S. Supp., 1961, provides: "Every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child, not less than seven nor more than sixteen years of age, shall cause such child to attend regularly the public, private, denominational, or parochial day schools each day that such schools are open and in session except when excused by school authorities, unless

such child has been graduated from high school. The term shall not be less than nine months in any district; Provided, that districts unable to maintain a nine-months school with a twelve mill levy, when supplemented by the state apportionment may, with the approval of the electors of that district, maintain an eight months school. Under no circumstances shall the school term be less than eight months."

Section 79-1201, R. R. S. 1943, provides: "Teachers' certificates issued by the authority of the State of Nebraska and entitling the holders thereof to teach in the public, private, denominational, parochial, and state-operated schools of this state, shall be issued by the Commissioner of Education to all persons of sound mental and physical health and good moral character upon the recommendations of the Board of Regents of the University of Nebraska, the State Board of Education for Normal Schools and Teachers Colleges, and the governing bodies of other Nebraska institutions of higher education."

Section 79-1210.01, R. S. Supp., 1961, provides: "The Nebraska Rural Elementary School Certificate shall, after July 1, 1965, be valid in kindergarten to eighth grade inclusive for a period of five years in schools organized as Class I school districts, and be valid in kindergarten to sixth grade inclusive for a period of five years in schools organized as Class II school districts. The requirements for this certificate shall be a recommendation as an elementary teacher and a minimum of sixty-four semester hours of college credit from a standard institution of higher education in Nebraska or another state. The college preparation shall include at least forty-five semester hours of college credit in the generally recognized subjects and areas of instruction taught in elementary grades and

fifteen semester hours of education including not less than three semester hours of supervised teaching or the equivalent. This certificate may be renewed any number of times for a period of five years upon the presentation of eight additional semester hours of college credit applicable toward a baccalaureate degree from a standard institution of higher education."

Section 79-1247.02, R. R. S. 1943, provides: "(1) The State Department of Education shall establish a procedure for accrediting the elementary and secondary schools of Nebraska, both public and private. The major purposes of such procedure shall be to maintain adequate school programs, and to encourage and assist schools in their purpose of increasing better instructional opportunities for the boys and girls of Nebraska. (2) The Commissioner of Education is authorized to appoint an accreditation committee, which shall be representative of the educational institutions and agencies of the state and shall include as a member the director of admissions of the University of Nebraska. (3) The accreditation committee shall be responsible for: (a) Formulating appropriate standards and policies with respect to the accreditation and classification of schools, and (b) making recommendations annually to the commissioner relative to the accreditation and classification of individual schools. No school is to be considered for accreditation status which has not first fulfilled all requirements for an approved school."

Section 79-1701, R. R. S. 1943, provides: "All private, denominational, and parochial schools in the State of Nebraska, and all teachers employed or giving instruction therein, shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers

and promotion of pupils. All private, denominational, and parochial schools shall have adequate equipment and supplies, and shall be graded the same and shall have courses of study for each grade conducted therein, substantially the same as those given in the public schools where the children attending would attend in the absence of such private, denominational or parochial schools."

Section 79-1702, R. R. S. 1943, provides: "No person shall be employed to teach or teach in a private, denominational, or parochial school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools where the children attending would attend in the absence of such private, denominational, or parochial school."

Section 79-1705, R. R. S. 1943, provides: "The county superintendent in first class school districts, or the superintendent of schools in all other districts, where any private, denominational, or parochial school is located, shall inspect such schools and report to the proper officers any evidence of the use of any textbooks or of any activities, instruction, or propaganda therein subversive to American institutions and republican form of government or good citizenship or of failure to observe any of the provisions of sections 79-1701 to 79-1707. The State Board of Education shall require the several county superintendents and superintendents of schools to make such inspections at least twice a year, and the school officers of such schools and the teachers giving instruction therein are required to permit such inspection and assist and cooperate in the making of the same."

Section 79-1706, R. R. S. 1943, provides: "In case any private, denominational, or parochial school after a final determination by the proper authorities under sections

79-1701 to 79-1706 fails, refuses, or neglects to conform to and comply therewith, no person shall be granted or allowed a certificate to teach therein, and the pupils attending such school or schools shall be required to attend the public school of the proper district as provided by law in like manner as though there were no such private, denominational, or parochial school. Full credit for certification under the law shall be given all teachers who have taught in private, denominational, or parochial schools the same as though they had taught in public schools."

The plaintiffs argue that the certification of teachers as provided for in sections 79-1701 and 79-1702, R. R. S. 1943, above set forth, and the minimal school standards provided for by sections 79-1701 and 79-1705, R. R. S. 1943, above set forth, and the regulations promulgated by the Nebraska Department of Education, have no relevance to the interests of the state in children not educated in public, tax-supported schools; that none of these, not one section or phrase, have any materiality to testing children educated in parochial schools to ascertain if they know the language of their country, understand its government, and are able to participate in the democratic process; and that the above-mentioned sections and regulations infringe upon the rights of the parent and the constitutional right guaranteed to the citizens of the State of Nebraska.

The plaintiffs cite Nebraska District of Evangelical Lutheran Synod v. McKelvie, 104 Neb. 93, 175 N. W. 531, 7 A. L. R. 1688, wherein this court held: "Chapter 249, Laws 1919, does not prohibit the teaching of a foreign language if taught in addition to the regular course of study in the elementary schools, so as not to interfere with the elementary education required by law, and out-

side of regular school hours during the required period of instruction.". The court further said: "All private, denominational and parochial schools and all teachers employed or giving instructions therein, shall be subject to and governed by the provisions of the school laws of the state as to grades, qualifications and certification of teachers. They are required to have adequate equipment and supplies, and shall have grades and courses of study substantially the same as the public schools where the children will attend in the absence of private, denominational or parochial schools. Nothing in the act is to be construed as interfering with the religious instruction in such schools. * * * Instruction is required to be given in American history and in civil government, both state and national, such as will give the pupils a thorough knowledge of the history of our country, its Constitution and our form of government, and such patriotic exercises shall be conducted as may be prescribed by the state superintendent. It is also provided that nothing in the act contained shall be so construed as to interfere with religious instruction in any private, denominational or parochial school. * * * The state should control the education of its citizens far enough to see that it is given in the language of their country, and to insure that they understand the nature of the government under which they live, and are competent to take part in it. Further than this, education should be left to the fullest freedom of the individual. * * * Neither the Constitution of the state nor the Fourteenth amendment takes away the power of the state to enact a law that may fairly be said to protect the lives, liberty and property of its citizens, and to promote their health, morals, education and good order. '* * * it surely is not an arbitrary exercise of the functions of the state to insist' that the fundamental basis of the education of its citizens shall be a knowledge of the language, history and nature of the

government of the United States, and to prohibit anything which may interfere with such education."

It is apparent that this case includes appropriate language which sustains the defendants' contention that the statutes here involved are not arbitrary, unreasonable, or an invalid attempt to exercise the police power of the state.

The plaintiffs cite Meyer v. State, 107 Neb. 657, 187 N. W. 100, where it was held: "The statute (Laws 1919, ch. 249) prohibiting the teaching of foreign languages in schools to children before they have passed the eighth grade, held, a reasonable exercise of the police power of the state." In this action the defendant Meyer was charged with the violation of chapter 249, Laws 1919, commonly known as the Siman language law. He was found guilty and fined $25. From such judgment he appealed to this court where the judgment of the trial court was affirmed. Appeal was taken to the Supreme Court of the United States.

In Meyer v. State of Nebraska, 262 U. S. 390, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A. L. R. 1446, it was held that forbidding the teaching in school of any other than the English language until the pupil has passed the eighth grade violates the guaranty of liberty in the Fourteenth Amendment to the federal Constitution, in the absence of sudden emergency rendering knowledge of the foreign language clearly harmful. The court further said: "The power of the State to compel attendance at some school and to make reasonable regulations for all schools including a requirement that they shall give instructions in English, is not questioned." In other words, the Supreme Court of the Unitel States reversed this court's holding in Meyer v. State, *supra*.

The plaintiffs cite Pierce v. Society of Sisters, 268 U. S. 510, 45 S. Ct. 571, 69 L. Ed. 1070, 39 A. L. R. 468. The Oregon Compulsory Education Act required every parent, guardian, or other person having control or charge or custody of a child between 8 and 16 years of age to send him to a public school for the period of time a public school should be held during the current year in the district where the child resided, and failure to do so was declared a misdemeanor. The manifest purpose was to compel general attendance at public schools by normal children between the ages of 8 and 16 years who had not completed the eighth grade. The Society of Sisters was an Oregon corporation with the power to care for orphans, educate and instruct the youth, and establish and maintain academies and schools. It had long devoted its property and efforts to the secular and religious education and care of children, and had acquired valuable good will of many parents and guardians. In its primary schools many children between 8 and 16 years of age were taught the subjects usually pursued in Oregon public schools during the first 8 years. Systematic religious instruction and moral training according to the tenets of the Roman Catholic Church were also regularly provided. The Society alleged that the enactment of the compulsory education act conflicted with the right of parents to choose schools where their children would receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, and the right of schools and teachers therein to engage in a useful business or profession, and was accordingly repugnant to the Constitution and void. No question was raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils, to require that all chil-

dren of proper age attend some school, that teachers should be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which was manifestly inimical to the public welfare. The United States Supreme Court ruled on the statute to abolish all schools other than public schools. This is not true in the State of Nebraska, and this case has little bearing on the questions involved in the instant case. It is noted that the language used in the above case relating to the right of the state to inspect and supervise all schools and to provide for the qualifications of teachers indicates clearly that such language corresponds to the statutes set forth above in the instant case.

The plaintiffs cite State ex rel. Chalfin v. Glick, 172 Ohio St. 249, 175 N. E. 2d 68, a decision of the Supreme Court of Ohio which preceded the decision by the Court of Appeals of Ohio which appears in 177 N. E. 2d 293. We will take up the latter case first. In such case the relators, for their cause of action against the respondents, stated that the respondents, in their respective capacities as school authorities, teachers, and parents, were in charge of and responsible for the operation of private schools for the education of children of compulsory school age whose parents were of the Mennonite or Old Order of Amish faith; and that they failed, neglected, and refused to provide instruction to the youth of their county attending such schools of the kind, amount, for the length of time, both as to school year and age of pupils, of the character of instruction in accordance with the minimum standards of education required by the laws of Ohio and the regulations of the board of education of the State of Ohio pursuant thereto and refused to permit the children to attend

the public schools of the district. The court said: "The first and controlling question for determination by the court is whether upon the state of facts revealed by the record a court of equity has jurisdiction to enjoin the respondents from continuing to operate the schools complained of and to send their children of compulsory school age to such schools. The basis for relator's claim for equitable relief by way of injunction, is that the respondents are maintaining a public nuisance for which there is no adequate remedy at law. * * * The legal right of the respondents to operate a nontax supported private school is not and can not be questioned, nor can it be questioned that the Constitution protects the respondents in their right to worship God according to the dictates of their own conscience and to teach in their church and in their schools the tenets of their faith. To constitute a nuisance, either public or private, the thing or act complained of as constituting a nuisance must either cause injury to the property of another, obstruct the reasonable use or enjoyment of his property or cause physical discomfort to him. * * * It is difficult to see how the operation of the nontax supported Amish school or the attendance of the children of that faith in such school can in any way cause injury to the public nor can it be said the operation of such school injuriously affects the health, safety or morals of the public, or works any injury to the public. * * * The violation of law in the instant case, if any, is not the *operation of the schools* under attack, nor in the *subjects taught* therein, nor the attendance of the children of respondents at *such school*, but the failure of the respondent parents to send their children to a school which *meets the standards of education* required by the compulsory education laws of the state. In a proper action this failure by the parents subjects them to the penalties provided for violation of

the compulsory education and attendance laws of the state. * * * This decision is limited to the precise question of the jurisdiction of a court of equity to grant relief upon the record presented. This decision should not be construed in any way as upholding the right of the respondent parents to refuse to send their children to a school which meets the compulsory educational laws of the state, or as relieving them from compliance with such laws." The court held: "Injunction will not lie to prohibit an alleged violation of law by parents who fail to send their children to a school which meets the minimum standards of education required by law."

The case simply held that the wrong remedy was pursued. The Supreme Court of Ohio affirmed the decision of the Court of Appeals. The Supreme Court held that a refusal to enjoi the operation of the schools did not amount to an abuse of discretion since no statutory authority for an injunction was found.

What the defendants contend for in the instant action is that they do not deny that the plaintiffs may tutor their children, nor deny the right of the parents of such children to send them to a school for religious training. What the defendants do deny is the right of the parents to tutor their children in lieu of sending them to school, and also deny the right of parents to send their children to a school operated by an unqualified teacher in lieu of sending them to a proper school. As indicated by the statutes heretofore set out, they are clear concerning the qualifications necessary to teach the children in the State of Nebraska in any school, be it parochial, denominational, private, or public.

The authorities cited by the plaintiffs have to do pri-

marily with the teaching of foreign language in parochial, private, or denominational schools. It is true that the authorities cited by the plaintiffs do hold that such teaching, under certain circumstances, is unconstitutional. However, in the instant case we are primarily concerned with the qualifications of a teacher employed to teach in the alleged school provided for by the plaintiffs. It is obvious that no attempt was made by the plaintiffs to employ a teacher meeting the qualifications prescribed by statute to teach in any school in this state. The amended petition does not allege that the teacher proposed to be hired by the plaintiffs has ever made application for a certificate to teach in this state.

As we view the statutes here involved, there is nothing arbitrary, unreasonable, or unconstitutional relating to the qualifications of teachers to teach in the parochial, denominational, private, or public schools of this state or with the requirements of compulsory education and attendance at such schools. Parochial, denominational, and private schools in this state have met the requirements of the statutes and have abided by them.

This brings us to certain cases cited by the defendants.

In Commonwealth v. Beiler, 168 Pa. Super. 462, 79 A. 2d 134, the public school code of March 10, 1949, required every parent of any child of compulsory school age to send such child to a day school in which the subjects prescribed by the State Council of Education were taught. It was held that such requirements did not violate the provisions of the state and federal Constitutions guaranteeing freedom of religion, as applied to members of the Old Order Amish Church. Defendants were convicted for violating the compulsory attendance provisions of the public school code. The court said: "We analyzed this question in Com.

ex rel. v. Bey, 166 Pa. Superior Ct. 136, 140, 70 A. 2d 693, where, after reviewing numerous cases, we held: 'In short, parents have no constitutional right to deprive their children of the blessings of education or prevent the state from assuring children adequate preparation for the independent and intelligent exercise of their privileges and obligations as citizens in a free democracy.' To that conclusion we adhere. Its major premise is that there is no interference with religious liberty where the State reasonably restricts parental control, or compels parents to perform their natural and civic obligations to educate their children. They may be educated in the public schools, in private or denominational schools, or by approved tutors; but educated they must be within the age limits and in the subjects prescribed by law. The life of the Commonwealth—its safety, its integrity, its independence, its progress,—and the preservation and enhancement of the democratic way of life depend upon the enlightened intelligence of its citizens. Teachers' Tenure Act Cases, 329 Pa. 213, 197 A. 344. These fundamental objectives are paramount, and they do not collide with the principles of religious or civil liberty. Unless democracy lives religious liberty cannot survive."

In the case of Commonwealth ex rel. School District of Pittsburgh v. Bey, 166 Pa. Super. 136, 70 A. 2d 693, the appellants, husband and wife, were convicted in a summary proceeding before an alderman and on appeal in the court below of violating the compulsory attendance provisions of the school code. The statute required every parent of any child or children of compulsory school age, between the ages of 8 and 17 years, to send such child or children to a day school, and that such child or children should attend such school continuously through the entire term, provided, that the certificate of any prin-

cipal or teacher of a private school, or of any institution for the education of children setting forth that the work of said school was in compliance with the provisions of the act, should be sufficient and satisfactory evidence thereof. Regular daily instruction by a properly qualified private tutor should be considered as complying with the provisions of the section if such instruction was satisfactory to the proper county or district superintendent of schools. The court said: "It will be observed that the requirement of compulsory attendance can be satisfied in a 'day school' which may be a public school, 'a private school,' or an 'institution for the instruction of children.' The last two classifications include parochial or denominational schools. Daily instruction by an approved private tutor will also satisfy the statute. * * * * * * Education is to-day regarded as one of the bulwarks of democratic government. Democracy depends for its very existence upon the enlightened intelligence of its citizens and electors.' * * * 'But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. * * * And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, *the state as parens patriae may restrict the parent's control by requiring school attendance,* * * *.'" It was further said: "* * * parents have no constitutional right to deprive their children of the blessings of education or prevent the state from assuring children adequate preparation for the independent and intelligent exercise of their privileges and obligations as citizens in a free democracy." See, also, Prince v. Commonwealth of Massachusetts, 321 U. S. 158, 64 S. Ct. 488, 88 L. Ed. 645.

In the case of State v. Hoyt, 84 N. H. 38, 146 A. 170, it was said: "Prohibition of teaching the German language to children under fourteen, unless they have com-

pleted eighth-grade work, was declared to be an infringement of the guaranty of liberty found in the fourteenth amendment to the constitution of the United States. Meyer v. Nebraska, 262 U. S. 390; Bartels v. Iowa, 262 U. S. 404. * * *. A statute requiring all children to attend the public school was declared invalid for a like reason. Pierce v. Society, 268 U. S. 510." In these cases the state charged some parents for failure to send their children to a public or private school as required by state law. The parents appealed their conviction upon the grounds that they had a private tutor and that that should satisfy the requirements of the state statutes. The Supreme Court affirmed the conviction of the parents, and reviewed the decisions of Pierce v. Society of Sisters, *supra*, which said that private and parochial schools could not be outlawed, and the case of Meyer v. State of Nebraska, *supra*, which said that a ban on foreign language teaching was not reasonable. The court further said: "While these decisions declare the existence of important restrictions upon state power to compel educations, there is nothing in them to indicate that the provisions of our statute offend against the federal guaranty of liberty. Under the interpretation of the guaranty, so far as it has been declared, it appears that attendance at some school may still be required, and that the state may supervise the school attended. The power to supervise necessarily involves the power to reject the unfit, and to make it obligatory to submit to supervision. The local statute does not go beyond these requirements. * * * The state being entitled to supervise education, it is not an answer to a charge of failure to furnish supervised instruction to show that equivalent unsupervised instruction is given. Unless the idea of personal liberty in the matter of educating children, recently developed in the federal decisions, is to be carried to the extreme of saying that the sole obligation that can be imposed upon the parent

is to educate, a provision that approval of the parent's method must be obtained by him is not invalid."

The case of People v. Turner, 121 Cal. App. 2d 86, 263 P. 2d 685, concerned the conviction of adults, for failure to send three children to public school. The California Supreme Court affirmed the conviction and decided that the state's compulsory education law did not unconstitutionally deprive parents of the right to determine how and where their children should be educated. The California statute provides that a tutor may be hired to teach children at least 3 hours a day, between the hours of 8 a.m., and 4 p.m., for 170 days each calendar year. The tutor, however, must hold a valid state teaching credential for the grade actually being taught. The court pointed out that at the time of its decision only 11 of 43 states permitted home instruction by parents or tutors and that except in two states the home instruction was specifically regulated in areas such as qualifications of the tutor and hours instructed.

In the instant case the right to send a child to a private school is not in dispute.

The above-cited statutes set up a standard for a good education. They allow churches and private groups to establish schools on the same basis. They require each child to be exposed to a school a certain number of months. Private and parochial schools are a part of the educational system of this state.

None of the cited cases disclose any statutes similar to those here involved to be arbitrary, unreasonable, or unconstitutional.

The right of religious freedom is not involved in this

case. The defendants do not deny these plaintiffs have the right to worship God as their consciences dictate as provided for under the Constitutions of the United States and of this state. What the defendants insist upon is a qualified teacher under reasonable statutes providing for such qualifications to teach school. The statutes complained of by the plaintiffs are not arbitrary or unreasonable nor an invalid attempt to exercise the police power of the State, nor are the regulations governing the approval and accreditation of Nebraska nonpublic schools issued by the Nebraska Department of Education.

From a review of the statutes here involved and the authorities relating to this subject matter, we conclude that the judgment of the trial court sustaining the defendants' demurrer should be, and is hereby, affirmed.

Affirmed.

APPENDIX C

Nebraska Statutes Challenged by This Appeal

(Reissue Revised Statutes of Nebraska)

79-201. Compulsory education; attendance required; length of school term. Every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child, not less than seven nor more than sixteen years of age, shall cause such child to attend regularly the public, private, denominational, or parochial day schools each day that such schools are open and in session except when excused by school authorities, unless such child has been graduated from high school. The term shall not be less than nine months in any district; *Provided,* that districts unable to maintain a nine months school with a twelve mill levy, when supplemented by the state apportionment may, with the approval of the electors of that district, maintain an eight months school. Under no circumstances shall the school term be less than eight months.

79-1201. Teachers' certificates; applicants from Nebraska educational institutions; issuance by Commissioner of Education. Teachers' certificates issued by the authority of the State of Nebraska and entitling the holders thereof to teach in the public, private, denominational, parochial, and state-operated schools of this state, shall be issued by the Commissioner of Education to all persons of sound mental and physical health and good moral character upon the recommendations of the Board of Regents of the University of Nebraska, the State Board of Education for Normal Schools and Teachers Colleges, and the governing bodies of other Nebraska institutions of higher education.

79-1202. Teachers' certificates; applicants from other states; requirements. Applicants for teaching certificates coming from states other than Nebraska who meet the Nebraska requirements for certification may be certificated by the Commissioner of Education upon the presentation of a regular teaching certificate which is in full force and based on not less than sixty semester hours of college credit and evidence of one year of successful teaching experience in the state which issued the certificate, or equivalent evidence of meeting such requirements, or upon the presentation of credentials showing the completion of a minimum of sixty semester hours of college credit earned in and upon the recommendation of a college or university approved by the respective state departments of public instruction to offer courses in teacher training, such credentials to indicate that work completed is of sufficient amount and quality to merit the granting of a Nebraska certificate and that the applicant is of good moral character. Applicants for renewals or professional certificates shall be certificated by the commissioner in accordance with the regulations as provided in sections 79-1209 to 79-1229.

79-1203. Teachers' certificates; application forms; fee; no refund. All certificates shall be issued by the Commissioner of Education upon application therefor, on forms to be prescribed and provided by him, and upon the payment by the applicant of a fee of two dollars for each application for a certificate. This fee may not be refunded. The application form shall include among other things, positive evidence as to the mental and physical fitness of the applicant.

79-1204. Terms, defined. (1) A year shall be construed to mean a minimum of thirty-two weeks of teaching ex-

perience. (2) Nonuse shall be construed to mean work outside the fields of teaching, administration, and supervision. (3) Pre-professional certificates shall be those certificates based on less than a baccalaureate college degree. (4) Professional certificates shall be those certificates based on one or more college degrees and prescribed teaching experience.

79-1205. Teachers' certificates; college credits; approved institutions; certification. All college credits shall have been earned in the regular teachers' training courses in a standard institution of higher education of this or another state and shall be certified by the proper authorities of the institution attended, showing the academic and the professional preparation of the applicant.

79-1206. Teachers' certificates; education; approved courses. The Commissioner of Education shall accept as education only those courses listed in the catalog or certified by the respective teacher training institutions as education.

79-1207. Teacher's certificate; refusal of Commissioner of Education to issue; when authorized. The Commissioner of Education shall refuse to grant a teaching certificate to any applicant below the degree level (1) who has not been engaged in education work, or (2) whose transcript of record does not show the satisfactory completion of at least eight semester hours of college credit within five years preceding the date of application for such certificate.

79-1208. Teachers' certificates; lapsed certificates; conversion; renewal; requirements. All Nebraska certificates which expired after September 1, 1938, and any Nebraska life certificate issued prior to September 1, 1957, which

has lapsed or is permitted to lapse by seven consecutive years of nonuse may be converted to an existing equivalent class of certificate or permit as named in section 79-1209, by presenting eight additional semester hours of approved college credit, from a standard institution of higher education; *Provided*, that until September 15, 1965, any such Nebraska expired or lapsed certificate may be converted to an equivalent certificate only if the certificate was based upon thirty or more semester hours of college credit and after September 30, 1965, such certificate may be so converted if the expired or lapsed certificate was based on sixty or more semester hours of college credit. Professional levels of all certificates which are based upon a baccalaureate degree may be renewed any number of times by presenting eight additional semester hours of approved preparation beyond the baccalaureate degree when approved by a standard institution of higher education.

79-1209. Teachers' certificates; certificates issued after September 30, 1959; classes; issuance and renewal. After September 30, 1959, the Commissioner of Education shall have authority to: (1) Issue and renew until September 30, 1965, the Nebraska General Elementary School Certificate; (2) issue until September 30, 1965, and thereafter renew only the Nebraska Junior Elementary School Certificate; (3) issue and renew, after July 1, 1965, the Nebraska Rural Elementary School Certificate; (4) issue and renew the Nebraska Elementary School Certificate; (5) issue and renew Nebraska Secondary School Certificate; (6) issue and renew Nebraska Administrative and Supervisory School Certificate; (7) issue and renew Special Teacher's Permit; and (8) issue and renew emergency and provisional permits; in accordance with the regulations as provided in sections 79-1201 to 79-1267.

79-1210.01. Teachers' certificates; rural elementary school certificate; qualifications required; renewal. The Nebraska Rural Elementary School Certificate shall, after July 1, 1965, be valid in kindergarten to eighth grade inclusive for a period of five years in schools organized as Class I school districts, and be valid in kindergarten to sixth grade inclusive for a period of five years in schools organized as Class II school districts. The requirements for this certificate shall be a recommendation as an elementary teacher and a minimum of sixty-four semester hours of college credit from a standard institution of higher education in Nebraska or another state. The college preparation shall include at least forty-five semester hours of college credit in the generally recognized subjects and areas of instruction taught in elementary grades and fifteen semester hours of education including not less than three semester hours of supervised teaching or the equivalent. This certificate may be renewed any number of times for a period of five years upon the presentation of eight additional semester hours of college credit applicable toward a baccalaureate degree from a standard institution of higher education.

79-1211. General elementary school certificate; qualifications required; renewal. The Nebraska General Elementary School Certificate shall be valid for a period of two years in kindergarten to eighth grade inclusive in all schools organized as Class I school districts. The requirements for this certificate shall be a minimum of forty semester hours of college credit, including at least eight hours in education of which at least three hours shall be observation and participation or in supervised teaching or the equivalent. This certificate may be renewed up to three times upon presentation of a minimum of eight additional semester hours of approved college credit for

each renewal, or until a total of sixty-four semester hours of college credit has been attained.

79-1211.02. Junior Elementary School Certificate; qualifications required; renewal. The Nebraska Junior Elementary School Certificate shall be valid for a period of three years in kindergarten to eighth grade inclusive in any school in the state. The requirements for this certificate shall be a diploma or credential from a standard institution of higher education based upon not fewer than sixty semester hours of college credit, including fifteen semester hours in education, at least three hours of which shall be in teaching under supervision or in cadeting, or the equivalent. This certificate may be renewed any number of times for a period of three years upon the presentation of eight additional semester hours of approved college credit, for each renewal, until a total of one hundred twenty-five semester hours of college credit has been attained.

79-1211.03. Elementary School Certificate; qualifications required; renewal; conversion. The Nebraska Elementary School Certificate shall be valid for a period of five years in kindergarten to ninth grade inclusive in any school in the state. The requirements for this certificate shall be a baccalaureate degree from a standard institution of higher education, including eighteen semester hours in education, with specialization in elementary education, at least three to six hours of which shall be in teaching under supervision or in cadeting, or the equivalent. This certificate may be renewed any number of times upon the presentation of eight additional semester hours of approved preparation beyond the baccalaureate degree. The certificate may be converted into the Professional Elementary School Certificate upon the completion of the additional requirements as prescribed in section 79-1213.01.

79-1213.01. Professional Elementary School Certificate; qualifications required; indefinite period. The Nebraska Professional Elementary School Certificate shall be valid for an indefinite period in kindergarten to ninth grade inclusive in any school unless it is permitted to lapse by seven consecutive years of nonuse. The requirements for this certificate shall be a baccalaureate degree from a standard institution of higher education including eighteen semester hours in education with specialization in elementary education, of which three to six semester hours shall be in teaching under supervision or in cadeting, or the equivalent and in addition eight semester hours of approved preparation beyond the baccalaureate degree, and a minimum of three years of successful teaching experience in kindergarten to ninth grade inclusive.

79-1222. Secondary School Certificate; qualifications required; renewal; conversion. The Nebraska Secondary School Certificate shall be valid for a period of five years in grades seven to twelve inclusive in any school in the state. The requirements for this certificate shall be a baccalaureate degree from a standard institution of higher education, including eighteen hours in education with specialization in secondary education, of which three to six hours shall be in teaching under supervision or in cadeting, or the equivalent. It is further required that the applicant for this certificate shall have earned at least eighteen semester hours of college credit in each of two or more generally recognized subject-matter fields. This certificate may be renewed any number of times for a period of five years upon presentation of eight semester hours of approved preparation beyond the baccalaureate degree. This certificate may be converted into the Professional Secondary School Certificate upon the completion of the requirements prescribed in section 79-1224.

79-1224. Professional Secondary School Certificate; qualifications required; indefinite period. The Nebraska Professional Secondary School Certificate shall be valid for an indefinite period, unless permitted to lapse by seven consecutive years of nonuse, in grades seven to twelve inclusive in any school in the state. The requirements for this certificate shall be the same as for the Secondary School Certificate and in addition thirty semester hours of approved preparation beyond the baccalaureate degree or a master's degree including six hours in education, and at least three years of successful teaching experience in grades seven to twelve inclusive.

79-1225. Secondary or elementary school certificate; specialization; instruction in field of specialization. The holder of a Nebraska Secondary or Elementary School Certificate which is based on a baccalaureate degree and with specialization equivalent to that of a college major, or a teaching sequence approved by a standard institution of higher learning in the fields of music, art, foreign language, guidance, library science, special education, physical education, health education, industrial arts, and vocational education shall be entitled to instruct or assist in his respective field or fields of specialization in all the school grades.

79-1226. Administrative and Supervisory Certificate; qualifications required; renewal; conversion. The Nebraska Administrative and Supervisory School Certificate shall be valid for a period of five years in any school in the state for teaching, administration, and supervision in the elementary field, or in secondary subject-matter fields, or in the fields of administration and supervision when the holder has had specific college preparation in the field or fields. The requirements for this certificate shall be a

baccalaureate degree from a standard institution of higher education, including eighteen hours in education, with specialization in either elementary or secondary education, of which three to six hours shall be in teaching under supervision or in cadeting, or the equivalent and in addition fifteen semester hours of graduate credit with specialization in the field or fields of administration or supervision and three or more years of successful teaching experience. This certificate may be renewed any number of times for a period of five years upon the presentation of eight additional semester hours of approved preparation beyond the baccalaureate degree. This certificate may be converted into the Professional Administrative and Supervisory School Certificate by meeting the requirements prescribed in section 79-1228.

79-1228. Professional Administrative and Supervisory School Certificate; qualifications required; indefinite period. The Nebraska Professional Administrative and Supervisory School Certificate shall be valid for an indefinite period of time, unless permitted to lapse by seven consecutive years of nonuse, for teaching, administration, and supervision in the elementary field, or in secondary subject-matter fields, or in the fields of administration and supervision when the holder has had specific college preparation in the particular field or fields. The requirements for this certificate shall be a master's degree with a major in education, with specialization in administration and supervision, and at least three years of successful experience as an administrator or supervisor.

79-1229. Administrative and Supervisory Certificate; required of administrators and supervisors. All persons holding the official title of (1) superintendent of schools, (2) principal or supervisor of an accredited school, or (3)

supervisor of any special subjects or subject in which such persons actually supervise the work of other teachers in that subject or those subjects, shall hold either a Nebraska Administrative and Supervisory Certificate or a Nebraska Professional Administrative and Supervisory Certificate.

79-1233. Nebraska certificate; prerequisite to teaching; junior colleges, not required. No person shall be employed to teach in any public, private, denominational, or parochial school in this state who does not hold a valid Nebraska certificate or Special Teacher's Permit legalizing him to teach the grade or subjects to which elected, except that no Nebraska certificate or permit shall be required of persons teaching exclusively in junior colleges organized as part of the public school system.

79-1234. Teacher's certificate; revocation or suspension; grounds; notice and hearing; effect of failure to appear; order; reinstatement. The State Board of Education may, for just cause, revoke any teacher's certificate or suspend such certificate for such period of time as the board, in its discretion, shall determine. Just cause may consist of any one or more of the following: (1) Incompetence, (2) immorality, (3) intemperance, (4) cruelty, (5) crime against the law of the state, (6) negligence of duty, (7) general negligence of the business of the school, (8) unprofessional conduct, or (9) physical or mental incapacity. The revocation or suspension of the certificate shall terminate the employment of such teacher, but such teacher must be paid up to the time of receiving notice of revocation or suspension. The board shall immediately notify the secretary of the school district or board of education where such teacher is employed. It shall also notify the teacher of such revocation or suspension and shall enter

its action in such case in the books or records of its office; *Provided*, no certificate shall be revoked or suspended without due notice from the board and an opportunity given the teacher to explain or defend his conduct. Any person failing to appear at a hearing called for the purpose of considering the revocation or suspension of his certificate, shall be deemed guilty of the charges preferred and shall have his certificate revoked or suspended immediately.

If, at the end of the period of suspension, the teacher makes an affirmative showing to the board that he has fully complied with the order of suspension and that he will not in the future engage in any practice listed in this section as grounds for revocation or suspension, his certificate shall be reinstated.

79-1235. Teachers' certificates; expiration; application for new certificate; requirements. Upon expiration of any certificate set forth in sections 79-1209 to 79-1247, each applicant for a new certificate shall secure such new certificate only upon meeting the requirements of certification set forth in sections 79-1209 to 79-1228.

79-1236. Teacher's certificate; extension; service in armed forces; conditions. The Commissioner of Education may extend the term of the teacher's certificate of any person who has served in the armed forces of the United States, and whose certificate was in force on the day of induction. This extension shall be equal in length of time to the total number of months which intervenes between the date of his entrance into the military service and the date of his discharge therefrom. There shall be no fee for this service. Each person who applies for an extension of the term of his certificate shall furnish the Commissioner of

Education proper evidence of his service in the armed forces and of his sound physical and mental health at the the time the application for such extension is made.

79-1239. Teacher's certificate; registration with county superintendent required; failure; certification of delinquency; effect; certification to county treasurer; withholding of funds of district. (1) Each teacher shall register his certificate in the office of the county superintendent of the county in which he is contracted to teach. The superintendent shall endorse upon the certificate that it has been registered and the date of registration. Such registration shall be without fee, and no certificate to teach nor contract for a school shall be valid until the certificate is so registered. The school board at the time of contracting with a teacher shall transmit to the county superintendent the name of the teacher to be employed, together with the position to which elected. Fifteen calendar days after the first day of teaching, the county superintendent shall certify to the school board the name of any teacher who has not registered his certificate or given evidence of application to the Department of Education and qualification for a teaching certificate or permit. Sixty calendar days after the first day of teaching the county superintendent shall certify to the school board the name of any teacher who has not registered a teaching certificate or permit valid for the position to which elected and that the contract of the teacher has been declared invalid. The teacher shall not be reimbursed for any services to the school district after the date of receipt of notification by the board of education that the contract of the teacher has been declared invalid.

(2) Sixty calendar days after the first day of teaching in each school year, the county superintendent shall notify

the county treasurer to withhold all school money belonging to any district employing an uncertificated teacher until the teacher has registered a certificate with the county superintendent or has been dismissed by the board of education employing such teacher, and it shall be the duty of the county treasurer to withhold such money.

79-1240. Teachers without certificates; employment prohibited; effect. The school board shall be personally liable for all public money paid to teachers who are not qualified under the provisions of sections 79-1209 to 79-1239. A teacher violating the provisions of said sections shall not recover any money for services while teaching during the time that such contract and certificate are invalid. Any person having knowledge of the employment by a school district of an uncertified teacher may prefer charges against the school board.

79-1241. Special permits; substitute teachers; specialized fields; issuance. The Commissioner of Education shall have the authority to issue Special Teacher's Permits to persons, not holding any teacher certificate, to permit their employment as substitute teachers or as teachers in specialized fields for which ordinary teacher training provides inadequate preparation.

79-1242. Special permits; rules and regulations governing issuance; annually establish. The Commissioner of Education shall, annually for the ensuing school term, establish the rules and regulations governing the issuance of the Special Teacher's Permits authorized under section 79-1241. Such rules and regulations shall set forth the requirements for such special permits and all rules and regulations thus set forth shall take effect at the beginning of the following school year and shall remain in force with-

out change for the ensuing school year. Such special permits shall be valid in any school in the state only for the subject or subjects, or grade or grades, for which they are issued in accordance with the rules and regulations laid down by the commissioner.

79-1243. Emergency and provisional permits; term; rules and regulations. The Commissioner of Education shall have the authority to issue and renew emergency and provisional permits for instructors in adult education or for temporary supply teachers for a term of not to exceed one year. The commissioner shall have the power to make all needful rules and regulations governing the issuance and renewals of such emergency and provisional permits.

79-1244. Teacher's certificate or permit; issuance at discretion of Commissioner of Education; required qualifications. The Commissioner of Education may at his discretion issue any teacher's certificate or permit provided for in sections 79-1209 to 79-1243 to an applicant who files with the office of the commissioner evidence of the possession of the required qualifications or the equivalent thereof, as stated in such sections.

79-1245. Teacher's certificate; issuance upon completion of teachers' training courses of University of Nebraska. Any graduate from the one, two, three, or four-year teacher training course of the University of Nebraska, which course may be prescribed by the Board of Regents, may be recommended by the Board of Regents and the faculty of the university to the Commissioner of Education for the issuance of a Nebraska certificate of the type to which his preparation entitles him. The commissioner, upon receipt of such recommendation accompanied by a properly ex-

ecuted application form as prescribed by him, shall issue the Nebraska certificate to which the applicant is entitled and for which he is recommended by the Board of Regents and faculty of the University of Nebraska.

79-1246. Teacher's certificate; issuance upon completion of teachers' training courses of other state colleges; when authorized. When any college, university, or normal schools in this state shall have a course of study equal in extent and similar in subjects to that of the University of Nebraska, or of the State Normal Schools and Teachers' Colleges, and shall have full and ample equipment and a faculty of instructors fully competent to give and actually giving satisfactory instruction in the branches contained in such course and equivalent to that given in the University of Nebraska or in the State Normal Schools and Teachers' Colleges, each graduate from such course may be recommended by the governing body of the said institution of higher education and the faculty thereof to the Commissioner of Education for the issuance of a Nebraska certificate of the type to which his preparation entitled him. The commissioner, upon receipt of such recommendation accompanied by a properly executed application form as prescribed by him, shall issue the Nebraska certificate to which the applicant is entitled. Such colleges as are referred to in this section shall from year to year maintain entrance requirements, degree requirements, and professional study requirements, equivalent to those of the University of Nebraska or of the State Normal Schools and Teachers' Colleges.

79-1247. Teacher's certificate; institutions presenting recognized teachers' training courses; determination by Commissioner of Education. The determination of the question as to what institutions are entitled to the privi-

leges set forth in section 79-1246 shall be in the hands of the Commissioner of Education or by a board of not less than three nor more than five members to be appointed by the commissioner and to be known as the State Board of Educational Examiners. No educational institutions shall be entitled to the privileges conferred by said section unless the following requirement have been fulfilled:

(1) Such institutions shall be incorporated under the laws of the State of Nebraska;

(2) The corporation shall have at least fifty thousand dollars invested or available for use in the school;

(3) The corporation shall employ not fewer than five teachers who shall put in full time in giving instruction in the branches of study required to be taught by the provisions of said section;

(4) The commissioner shall satisfy himself by personal inspection or by the personal inspection of the State Board of Educational Examiners that any institution desiring recognition under said section has fully complied with the requirements set forth herein and in said section; and

(5) The entrance requirements to the elementary and higher courses and the time required for the completion of said courses shall be the same as in the University of Nebraska or in the State Normal Schools and Teachers' Colleges. Each year the commissioner shall satisfy himself by personal inspection or by the personal inspection of the State Board of Educational Examiners that the requirements have been met.

79-1247.01. Emergency or provisional permit; aliens; issuance and renewal; rules and regulations. The Commis-

sioner of Education may issue an emergency or provisional permit for an alien to teach in any public, private, or parochial school in the State of Nebraska; *Provided*, no such permit shall be issued to any person who is an alien and whose residence in the United States has been of a duration sufficient to have permitted him to become a citizen of the United States, nor shall any teacher's certificate be issued to any alien.

79-1247.02. Elementary and secondary schools; procedure for accrediting; appointment of committee; duties. (1) The State Department of Education shall establish a procedure for accrediting the elementary and secondary schools of Nebraska, both public and private. The major purposes of such procedure shall be to maintain adequate school programs, and to encourage and assist schools in their purpose of increasing better instructional opportunities for the boys and girls of Nebraska.

(2) The Commissioner of Education is authorized to appoint an accreditation committee, which shall be representative of the educational institutions and agencies of the state and shall include as a member the director of admissions of the University of Nebraska.

(3) The accreditation committee shall be responsible for: (a) Formulating appropriate standards and policies with respect to the accreditation and classification of schools, and (b) making recommendations annually to the commissioner relative to the accreditation and classification of individual schools. No school is to be considered for accreditation status which has not first fulfilled all requirements for an approved school.

79-1701. Private, denominational, or parochial schools; laws applicable. All private, denominational, and parochial schools in the State of Nebraska, and all teachers employed or giving instruction therein, shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of pupils. All private, denominational, and parochial schools shall have adequate equipment and supplies, and shall be graded the same and shall have courses of study for each grade conducted therein, substantially the same as those given in the public schools where the children attending would attend in the absence of such private, denominational, or parochial schools.

79-1702. Private, denominational, or parochial schools; teachers; qualifications required. No person shall be employed to teach or teach in a private, denominational, or parochial school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools where the children attending would attend in the absence of such private, denominational, or parochial school.

79-1703. Private, denominational, or parochial schools; religious instruction authorized. Nothing in sections 79-1701 to 79-1704 contained shall be so construed as to interfere with religious instruction in any private, denominational, or parochial school.

79-1704. Private, denominational, or parochial schools; management and control. For the purposes of sections 79-1701 to 79-1704 the owner or governing board of any private, denominational, or parochial school shall have authority to select and purchase textbooks, equipment, and

supplies, to employ teachers, and to have and exercise the general managment of the school, subject to the provisions of said sections.

79-1705. Private, denominational, or parochial schools; inspection by county superintendent or superintendent of schools required. The county superintendent in first class school districts, or the superintendent of schools in all other districts, where any private, denominational, or parochial school is located, shall inspect such schools and report to the proper officers any evidence of the use of any textbooks or of any activities, instruction, or propaganda therein subversive to American institutions and republican form of government or good citizenship or of failure to observe any of the provisions of sections 79-1701 to 79-1707. The State Board of Education shall require the several county superintendents and superintendents of schools to make such inspections at least twice a year, and the school officers of such schools and the teachers giving instruction therein are required to permit such inspection and assist and co-operate in the making of the same.

79-1706. Private, denominational, or parochial schools; nonconformity with school law; penalty. In case any private, denominational, or parochial school after a final determination by the proper authorities under sections 79-1701 to 79-1706 fails, refuses, or neglects to conform to and comply therewith, no person shall be granted or allowed a certificate to teach therein, and the pupils attending such school or schools shall be required to attend the public school of the proper district as provided by law in like manner as though there were no such private, denominational, or parochial school. Full credit for certification under the law shall be given all teachers who have taught in private, denominational, or parochial schools the same as though they had taught in public schools.

79-1707. Violations; penalty. Any person violating any of the provisions of sections 79-1701 to 79-1706 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than one hundred dollars or be imprisoned in the county jail not to exceed three months.

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JOHN F. DAVIS, CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1962

No. 827

LILA MEYERKORTH, AND THE EMMANUEL ASSOCIATION, APPELLANTS,

V.

STATE OF NEBRASKA, FREEMAN DECKER, COMMISSIONER OF EDUCATION OF THE STATE OF NEBRASKA, HELEN HANIKA, COUNTY SUPERINTENDENT OF RICHARDSON COUNTY, NEBRASKA, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEBRASKA

MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

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MOTION TO DISMISS

Pursuant to the provisions of Rule 16 (b) of the Revised Rules of the Supreme Court of the United States, the appellees respectfully move the Court to dismiss this appeal upon the ground that it does not present a substantial federal question for the following reasons:

I.

The Statutes of the State of Nebraska in question do not unconstitutionally infringe upon the appellants' right to religious freedom under previous rules of this Court.

II.

The questions raised by appellants have substantially been answered by previous decisions of this Court.

Respectfully submitted,

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BRIEF IN SUPPORT OF MOTION TO DISMISS

PROPOSITIONS OF LAW

I.

Religious rights are not beyond limitation.

Prince v. *Commonwealth of Massachusetts*, 321 U. S. 158, 88 L. Ed. 645.

II.

Statutes requiring compulsory education either in public or private schools, but where the private tutor

must hold a valid certification have been held to not involve a substantial federal question.

People v. *Turner*, 121 Cal. App. 2d, 861, 263 Pac. 2d 685, appeal dismissed, 347 U. S. 972, 98 L. Ed. 1112.

cf. Meyer v. *State of Nebraska*, 262 U. S. 390, 67 L. Ed. 1042.

Pierce v. *Society of Sisters*, 268 U. S. 510, 69 L. Ed. 1070.

ARGUMENT

I.

Religious Rights Are Not Beyond Limitation.

In the case of *Prince* v. *Massachusetts*, *supra*, plaintiff was convicted for violating the Massachusetts child labor law by acts said to be a rightful exercise of her religious convictions, i. e. selling of "Watchtower", a religious magazine, by her nine year old ward. In holding that the state, in exercise of its police power, could limit the rights of religious freedom as well as that of parenthood, this court stated at page 166:

"* * * * *

"* * *. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds him claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does

not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. People v. Pierson, 176 NY. 201, 68 NE 243, 63 LRA 187, 98 Am St Rep 666. * * *.

"* * * * *."

II.

Statutes Requiring Compulsory Education Either In Public or Private Schools, But Where the Private Tutor Must Hold a Valid Certification Have Been Held to Not Involve a Substantial Federal Question.

The recent case of *People* v. *Turner*, 121 Cal. App. 2d 861, 263 P. 2d 685, concerned the conviction of adults for failure to send three children to public school. The California Supreme Court affirmed the conviction and decided that the state's compulsory education law did not unconstitutionally deprive parents of the right to determine how and where their children should be educated. It is interesting to note that the California statute provides that a tutor may be hired to teach children at least three hours a day, between the hours of 8 a.m. and 4 p.m., for one hundred seventy days each calendar year. The tutor, however, must hold a valid state teaching credential for the grade actually being taught. The court went on to point out that at the time of its decision only eleven of forty-eight states permitted home instruction by parents or tutors and that except in two states the home instruction was specifically regulated in areas such as qualifications of the tutor and hours instructed.

The court stated:

"* * * * *

"We have been unable to find a single case in which it has been held that so-called compulsory at-

tendance statutes are rendered unconstitutional and void merely by reason of a failure to recognize home instruction as an alternative to attendance in a public school.

"* * * * *"

Attempt was made to get the case before the United State Supreme Court which Court dismissed the appeal for the want of a substantial federal question, two justices being of the opinion that probable jurisdiction should be noted.

While the case of *Meyer* v. *State of Nebraska, supra*, decided that a state could not require subjects be taught in public and private schools in the English language only, it has also long stood for the proposition relied upon by the states that the state could require compulsory attendance at some school and make reasonable regulations for all schools; the court stated at page 402:

"* * * * *

"The power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English, is not questioned. * * *

"* * * * *"

While the case of *Pierce* v. *Society of Sisters of Holy Name, supra*, established that a state could not require children to attend public schools only, it is clear from the statutes involved in the present case that no such question is here involved, but that in fact the state has been particularly careful to guarantee equal protection of the laws to private and parochial schools together

with public schools. Section 79-1701, Reissue Revised Statutes of Nebraska 1943, provides in part:

> "All private, denominational, and parochial schools in the State of Nebraska, and all teachers employed or giving instruction therein, shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of pupils. * * *."

Section 79-1702, Reissue Revised Statutes of Nebraska 1943, provides:

> "No person shall be employed to teach or teach in a private, denominational, or parochial school who has not obtained a teacher's certificate entitling such teacher to teach corresponding courses or classes in public schools where the children attending would attend in the absence of such private, denominational, or parochial school.

Section 79-1703, Reissue Revised Statutes of Nebraska 1943, provides:

> "Nothing in sections 79-1701 to 79-1704 contained shall be so construed as to interfere with religious instruction in any private, denominational, or parochial school."

The texts of said statutes are contained in full in appellants' Jurisdictional Statement, Appendix C, p. 52.

CONCLUSION

Appellees respectfully contend that the brief resume of cases from this Court plus the Nebraska Statutes cited, establish that the contentions of appellants are not sufficient to require plenary consideration by this Court

in light of the rules already firmly established by the Court; we therefore respectfully pray that this appeal be dismissed for lack of substantial federal questions.

Respectfully submitted,

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